

### **REMARKS**

In view of the above amendment, applicant believes the pending application is in condition for allowance. The applicant has amended claims 21 and 25 as suggested by the Examiner. Support for newly added claims 26-29 can be found in the original claims and in the examples.

Claim 23 is rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorrestijn et al., US 5,948,858 ("Dorrestijn"). The applicant respectfully traverses these rejections.

#### **35 U.S.C. 112, Rejection**

Claim 23 is rejected under 35 U.S.C. 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In order to expedite prosecution the applicant has cancelled claim 23. For the above reasons, this rejection should be withdrawn.

#### **35 U.S.C. 103(a) Rejection**

Claims 12-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorrestijn. The European counterpart of Dorrestijn, EP0784080, is cited in paragraph no. [00014] of the applicant's published application. In paragraph no. [00014] the applicant discloses that according to Dorrestijn, the rubber of the graft copolymer cannot contain any groups which can react with the end groups of the polyamide.

Furthermore, the Examiner also noted on page 4, of the Office Action, that Dorrestijn is silent on two graft copolymers of ABS that differ at least by 5% by weight from one and another in their rubber contents being present.

The Examiner stated at the bottom of page 4 of the Office Action,

**However, it would have been obvious to one with ordinary skill in the art at the time the invention was made by modifying the polymer composition of Dorrestijn et al. via using two graft copolymers of ABS that differ at least by 5% by weight from one and another in their rubber contents being present by Dorrestijn et al.** because it has been held that “it is prima facie obvious to combine two compositions each taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.” MPEP § 2144.06 1. (emphasis added)

“[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Furthermore, the Examiner cannot selectively pick and choose from the disclosed parameters without proper motivation as to a particular selection. The mere fact that a reference may be modified to reflect features of the claimed invention does not make the modification, and hence the claimed invention, obvious unless the prior art suggested the desirability of such modification. *In re Mills*, 916 F.2d 680, 682, 16 USPQ2d 1430 (Fed. Cir. 1990); *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992). Thus, it is impermissible to simply engage in a hindsight reconstruction of the claimed invention where the reference itself provides no teaching as to why the applicant’s combination would have been obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991).

Therefore, it would not have been obvious to modify the polymer composition as alleged by the Examiner on the last paragraph of page 4 of the Office Action.

**Claim 20**

The Examiner stated at page 5 of the Office Action,

**Dorrestijn et al. is silent on a first step of mixing a portion of the graft copolymer and the polyamide.** Afterwards, a second step is applied via adding the rest of the components together into the mixture.

However, it would have been obvious to one with ordinary skill in the art at the time the invention was made by modifying the process via first mixing a portion of the graft copolymer and the polyamide together first, since changes in the sequence of adding ingredients have been held to establish *prima fade* obviousness. See MPEP §2144.04 IV C. (emphasis added)

As stated above, the mere fact that a reference may be modified to reflect features of the claimed invention does not make the modification, and hence the claimed invention, obvious unless the prior art suggested the desirability of such modification. As recognized by the Examiner, the prior art does not suggest the features of claim 20. Therefore, it would not have been obvious to modify the polymer composition as alleged by the Examiner on page 5 of the Office Action.

**Claims 26 and 27**

Claims 26 and 27 require component F). The Examiner indicated at the top of page 5 of the Office action, “Dorrestijn et al. is silent on the additives: silicone oil or stearate, however, the limitations of these claims apply only when the optional ingredient is included.”

**Claims 28 and 29**

In claims 28 and 29 component D) is a required ingredient. The applicant does not believe that the prior art suggests the features of claims 28 and 29.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00328-US from which the undersigned is authorized to draw.

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Respectfully submitted,

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